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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,023	02/28/2001	Colin Thomas Metcalfe	HOWS3002/JJC	5866
23364 7590 02/07/2007 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			EXAMINER ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/736,023	METCALFE, COLIN THOMAS	
	Examiner	Art Unit	
	Darren W. Ark	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14,23-29,46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14,23-29,46 and 47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 8-11 are objected to because of the following informalities:

Claim 8, line 2, --each-- should be inserted after "particles which".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-14, 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 12, the term "the pesticide" lacks positive antecedent basis.

Claim 12 should be made to depend from claim 10 instead of claim 1.

In regard to claim 13, the term "the behavior modifying chemical" lacks positive antecedent basis. Claim 13 should be made to depend from claim 10 instead of claim

1.

In regard to claim 14, the term "the cores of the particles" lacks positive antecedent basis. Claim 14 should depend from claim 10 instead of claim 6.

In regard to claim 28, the term "particles of a pesticidal composition" renders the claim vague and indefinite since "particles comprising a magnetic material" were

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previously set forth in claim 23 and it is therefore unclear whether the particles of claims 28 and 23 are the same.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-10, 14, 23-27, 29, 46, 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taylor 3,921,983.

In regard to claim 1, Taylor discloses an insect trap with a housing (18 OR 20) defining an entrance (defined by 24 OR 30) and a trapping area (26) disposed below the entrance, the method comprising the step of coating a zone of or within the housing (bottom of 18 OR horizontal surface of 20) with a composition including particles comprising a magnetic material (16 which may be constructed completely of a ferromagnetic material or the like), whereby an insect in contact with the composition becomes at least partially coated with the composition and is destabilized (no particular particle configuration being recited; also the markers 16 may be large enough that they are capable of covering portions of certain sized insects and provide obstacles that may cause an encountering insect to stumble over 16 and fall onto the bottom of 18), thereby falling into the trapping area.

In regard to claims 6, 7, and 10, Taylor discloses a behavior modifying chemical (thermoplastic material can modify insect behavior by presenting insects with an obstacle; chemical not being particularly claimed).

In regard to claim 8, Taylor discloses the particles being composite particles which comprise a core of an inert substrate (clear thermoplastic material) which is impregnated with the magnetic material (ferromagnetic material embedded therewithin; see col. 2, lines 29-32).

In regard to claim 23, Taylor discloses a trap comprising a housing (20), a zone of the housing comprising a magnetically polarized material (32) and the zone being coated with a composition including particles (16) comprising a magnetic material of opposite polarity to that of the magnetically polarized material (16 are attracted to 32).

In regard to claims 26 and 47, Taylor discloses the zone has a surface which is inclined to the horizontal (corners of 18, 20; also when horizontal surfaces of 18, 20 are slightly inclined such as when they rest on a non-level surface, then they would also be inclined to the horizontal).

6. Claims 1-7, 14, 23-27, 29, 46, 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gladden 3,480,145.

In regard to claim 1, Gladden discloses an insect trap with a housing (14) defining an entrance (20 or 22) and a trapping area (see Fig. 2) disposed below the entrance, the method comprising the step of coating a zone of or within the housing (adjacent to where 28, 30 are positioned) with a composition including particles comprising a magnetic material (magnetic particles in oil), whereby an insect in contact

with the composition becomes at least partially coated with the composition and is destabilized (no particular particle configuration being recited; also the markers 16 may be large enough that they are capable of covering portions of certain sized insects and provide obstacles that may cause an encountering insect to stumble over 16 and fall onto the bottom of 18), thereby falling into the trapping area.

In regard to claim 2, it is inherent that there will be particles with an average particle size diameter in the range of from 2 to 100 μ m.

In regard to claims 6, 7, and 10, Gladden discloses a behavior modifying chemical (engine oil can modify insect behavior by presenting insects with an obstacle; chemical not being particularly claimed).

In regard to claim 23, Gladden discloses a trap comprising a housing (14), a zone of the housing comprising a magnetically polarized material (where 28, 30 are positioned) and the zone being coated with a composition including particles (magnetic particles in oil) comprising a magnetic material of opposite polarity to that of the magnetically polarized material (magnetic particles drawn to 28, 30 for collection).

7. Claims 1, 3-5, 23-27, 29, 46, 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Starkweather 4,331,335.

In regard to claim 1, Starkweather discloses an insect trap with a housing (A1) defining an entrance (open front of A1) and a trapping area (34-38) disposed below the entrance, the method comprising the step of coating a zone of or within the housing (adjacent to where 43 are positioned) with a composition including particles comprising a magnetic material (44), whereby an insect in contact with the composition becomes at

least partially coated with the composition and is destabilized (no particular particle configuration being recited; also 44 may be large enough that they are capable of covering portions of certain sized insects and provide obstacles that may cause an encountering insect to stumble over 44 and fall onto the bottom of 38 in Fig. 2), thereby falling into the trapping area.

In regard to claim 23, Starkweather discloses a trap comprising a housing (A1), a zone of the housing comprising a magnetically polarized material (where 43 are positioned) and the zone being coated with a composition including particles (44) comprising a magnetic material of opposite polarity to that of the magnetically polarized material (44 drawn to 43).

8. Claims 1, 3-5, 23-27, 29, 46, 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Linnebuhr, deceased 3,704,777.

In regard to claim 1, Linnebuhr discloses an insect trap with a housing (10) defining an entrance (17) and a trapping area (lower end of 22 leading to 11) disposed below the entrance, the method comprising the step of coating a zone of or within the housing (adjacent to where 23 are positioned) with a composition including particles comprising a magnetic material (B comprising paper clips, nails and the like), whereby an insect in contact with the composition becomes at least partially coated with the composition and is destabilized (no particular particle configuration being recited; also B may be large enough that they are capable of covering portions of certain sized insects and provide obstacles that may cause an encountering insect to stumble over B and fall onto the bottom of 11 in Fig. 3), thereby falling into the trapping area.

In regard to claim 23, Linnebuhr discloses a trap comprising a housing (10), a zone of the housing comprising a magnetically polarized material (where 23 is positioned) and the zone being coated with a composition including particles (B) comprising a magnetic material of opposite polarity to that of the magnetically polarized material (B drawn to 23).

In regard to claims 26 and 47, Linnebuhr discloses the zone has a surface which is inclined to the horizontal (20 is inclined to the horizontal).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor 3,921,983.

Taylor does not disclose the particles having an average particle size diameter in the range of from 2 to 100 μ m. It would have been an obvious matter of design choice to have the particles attracted to the magnet of Taylor have an average particle size diameter in the range of from 2 to 100 μ m since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Taylor would perform equally as well by doing so, and because it would

have been obvious to one of ordinary skill in the art to size the particles of Taylor such that the markers or discs are of the appropriate size relative to the game card.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Starkweather 4,331,335.

Starkweather does not disclose the particles having an average particle size diameter in the range of from 2 to 100 μ m. It would have been an obvious matter of design choice to have the particles attracted to the magnet of Starkweather have an average particle size diameter in the range of from 2 to 100 μ m since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Starkweather would perform equally as well by doing so, and because it would have been obvious to one of ordinary skill in the art to make the device of Starkweather such that it is compatible with the particles having an average particle size diameter in the range of from 2 to 100 μ m since it would allow the device of Starkweather to collect and hold hardware items of very small size.

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Linnebuhr, deceased 3,704,777.

Linnebuhr does not disclose the particles having an average particle size diameter in the range of from 2 to 100 μ m. It would have been an obvious matter of design choice to have the particles attracted to the magnet of Linnebuhr have an average particle size diameter in the range of from 2 to 100 μ m since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Linnebuhr would perform equally as well by doing so,

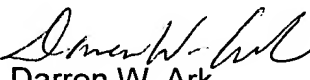
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and because it would have been obvious to one of ordinary skill in the art to make the device of Linnebuhr such that it is compatible with the particles having an average particle size diameter in the range of from 2 to 100 μ m since it would allow the device of Linnebuhr to collect and hold magnetizable items of very small size.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Darren W. Ark
Primary Examiner
Art Unit 3643

DWA